

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(PJC)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S OPPOSITION TO "DEFENDANT PETERSON FARMS,
INC.'S MOTION *IN LIMINE* REGARDING POULTRY WATER QUALITY
HANDBOOK" [DKT. #2396, #2437]**

Plaintiff, the State of Oklahoma ("the State"), respectfully opposes "Defendant Peterson Farms' Inc.'s Motion *in Limine* Regarding Poultry Water Quality Handbook" [DKT #2396, #2437] and asks that it be denied in its entirety.

I. Introduction

The Poultry Water Quality Handbook ("PWQH") was created by the Poultry Water Quality Consortium, a group that consisted of the U.S. Poultry and Egg Association (then known as the Southeastern Poultry and Egg Association), the Tennessee Valley Authority, the U.S.D.A. Natural Resource Conservation Service and the United States E.P.A.. *See* Ex. 1 (First Ed. PWQH at PIGEON 0587). It was first published in 1994. *See id.* It was later revised and updated, and a second edition was published in 1998. *See* Ex. 2 (Second Ed. PWQH). The PWQH was a collaborative effort between industry and government to consolidate information, ideas, and references in order to provide the most up-to-date information about the management of poultry waste and the water quality impacts of poultry waste. *See* Ex. 1, at PIGEON 0494, Ex. 4, Dalton Depo. at pp. 39-40. During his deposition in this case, Don Dalton, the former president of the U.S. Poultry and Egg Association, explained that the PWQH was widely

distributed by both the Tennessee Valley Authority and the U.S. Poultry and Egg Association, which made copies available to its members and also provided copies at its annual trade show, a major annual event for the poultry industry. *See* Ex. 4, Dalton Depo. at pp. 37-41.

In the course of discovery in this case, the PWQH was produced by Peterson grower and former employee Jim Pigeon and by the Cargill Defendants, and it was discussed in various depositions, including in the deposition of Don Dalton, who participated in the creation of the PWQH in his role as president of the U.S. Poultry and Egg Association. The copy of the PWQH produced by Mr. Pigeon included a cover letter that demonstrates that Peterson's former President, Dan Henderson, endorsed the handbook, sending the PWQH to Peterson poultry growers, along with instructions from Henderson instructing Peterson's growers to review the PWQH and to use the practices in their operations. *See* Ex. 3, PWQH with Peterson cover page and Henderson letter at PIGEON 0611-0613.

Peterson now seeks to exclude the PWQH, claiming that it should be excluded because it is hearsay, and because it will be more prejudicial to Peterson than it will be probative to the case. Peterson's arguments are without merit because (1) the PWQH is not hearsay, (2) even if it were offered in a manner that caused it to be considered hearsay, it could be admitted under various exceptions to the hearsay rule, and (3) its probative value certainly outweighs any prejudice it could theoretically create for Peterson (or any other Defendant who has joined in Peterson's motion).

Peterson's motion focuses on the second edition of the handbook produced by Mr. Pigeon, which included the letter from Dan Henderson. However, the State intends to use both the first and second editions of the PWQH at trial, as well as the letter from Mr. Henderson. Several of the arguments below apply to both versions, and some specifically address the

arguments raised by Peterson regarding the cover letter from Mr. Henderson and the second edition that was attached thereto. *See* Ex. 3, at PIGEON 0611-0613.

II. The PWQH is admissible because it is not hearsay. Even if it were considered hearsay, it fits within exceptions to the hearsay rule.

Peterson argues that the PWQH is hearsay. It is not. First, it is not hearsay because the PWQH constitutes an admission by a party opponent. And second, it is not hearsay because, even were it not being offered for the truth of the matters contained therein, it demonstrates what was known and / or what was knowable by the Defendants at certain points in time.

A. The PWQH is relevant evidence that is not hearsay.

Peterson argues that the PWQH is not admissible because it is not an admission by a party opponent as set forth in Fed. R. Evid. 801(d)(2). Motion, pp. 4-6. Federal Rule of Evidence 801(d)(2) sets forth various types of statements that are considered admissions of party opponents. The PWQH clearly fits within multiple categories set forth in Rule 801(d)(2). Rule 801(d)(2) explains that a statement is an admission by a party opponent if it is offered against a party and is "(A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship." Fed. R. Evid. 801(d)(2).

Interestingly, the cases cited by Peterson strongly support admission of the PWQH as an admission. For example, in *Wagstaff v. Protective Apparel Corp.*, 760 F.2d 1074 (10th Cir. 1985), the Tenth Circuit explains: "Fed. R. Evid. 801(d)(2) provides that a statement is not hearsay if it is offered against a party and is 'a statement of which he has manifested his adoption or belief in its truth.'" In *Wagstaff*, the Court held that "[b]y reprinting the newspaper articles

and distributing them to persons with whom defendants were doing business, defendants unequivocally manifested their adoption of the inflated statements made in the newspaper articles." *Wagstaff*, 760 F.2d at 1078.

In *Grundberg v. Upjohn Co.*, 137 F.R.D. 365 (D. Utah 1991), the district court held that the defendant's use of protocol report forms from a medical study as confirming information to support a new drug application amounted to adoption of the statements for Rule 801(d)(2)(B) purposes. The court in *Pfizer, Inc. v. Teva Pharm. USA, Inc.*, 2006 WL 3041102 (D.N.J. Oct. 26 2006), likewise found that the defendant could not use an expert affidavit to support a patent application, and later deny that it accepted the truth of the information contained therein.

These cases are all very similar to the instant case. In each of these cases, the evidence at issue was a document drafted by a non-party, which the defendants used for business purposes and distributed to others with an endorsement of the material contained in the document. That is exactly what Peterson did with the PWQH. Peterson used the PWQH for business purposes, reproducing the document, and distributing it to growers, instructing them to read the document and follow the directions therein. Peterson used and sought to benefit from the PWQH and now is attempting to disown the statements it previously endorsed.

Furthermore, the PWQH clearly was adopted by Peterson when Peterson's president, Dan Henderson, wrote the cover letter describing the PWQH as "the most up-to-date information on water quality; information that will serve as a tool in managing your poultry operations." *See* Ex. 3, at PIGEON0613. Mr. Henderson explains in his cover letter that the PWQH was created "for our industry," and then proceeds to instruct Peterson's growers to "review the information in this book," and "[u]se it as a resource for making the *right* choices and following the *right* management practices in your operation." *Id.* (emphasis added). In addition, Peterson created a

revised cover sheet for the PWQH with its name and logo across the front page just above the title of the PWQH. *See* Ex. 3, at PIGEON 0611. It is difficult to imagine a more direct and complete adoption or belief in the truth of a document. Furthermore, this adoption was made by the President of Peterson; thus, there is no question as to his authority to make this adoption on behalf of Peterson. Peterson's attempts to dilute the statements in this letter by claiming that Mr. Henderson only gave it a brief review should not be given any weight. Motion, p. 3. Regardless of the extent to which he reviewed the document, his letter is a clear manifestation of an adoption of the PWQH as "the most up to date information on water quality," which it instructed its growers to use as a "tool in managing" their poultry operations. *Id.*

Aside from the issue of whether the PWQH is an admission, the various editions of the PWQH are relevant because they demonstrate what was known and knowable by Defendants about the problems created by the excess land application of poultry waste. Simply put, an important issue in determining the State's trespass and nuisance-based claims is whether Defendants knew -- or at a minimum had reason to recognize -- that the practice of land-applying poultry waste in the IRW has been causing and is continuing to cause a nuisance and trespass. Each edition of the PWQH is directly relevant to what was known or knowable by Defendants about the land application of poultry waste. The PWQH addresses the issues of the constituents contained in poultry waste, the runoff of land-applied poultry waste, and the environmental problems caused by land-applied poultry waste. *See, e.g.,* Ex. 1 at PIGEON 0493; Ex. 2 at CARTP220101-220102. The PWQH is therefore relevant, admissible evidence to demonstrate that this information was known or knowable by Defendants, without being an out-of-court statement offered for the truth of the matter asserted. It will be offered to demonstrate that Defendants had information available to them, and to establish that they were on notice about the

environmental problems created by the land application of poultry waste. Thus, Peterson's argument that the PWQH must be excluded because it is hearsay misses the mark and does not preclude the admission of the PWQH into evidence.

B. Even if the PWQH is offered into evidence in a manner that causes it to be hearsay, the PWQH is admissible.

Even if the State were to seek to admit the PWQH in a manner that amounted to hearsay, the PWQH clearly would be admissible under at least one exception to the hearsay rule.

1. The PWQH is a statement against interest

Peterson claims that the PWQH does not qualify under Fed. R. Evid. 804(b)(3) because Peterson is not an unavailable declarant, the PWQH is not a statement against interest, and the State lacks corroborating evidence. Motion, pp. 6-7. For the substance of the statement, and Peterson's adoption of that statement, the State refers to the argument above pertaining to admissions against interest -- Peterson clearly adopted the PWQH and the statements contained therein through Dan Henderson's letter. See *supra* section II.A. Peterson's argument also muddles the issue of unavailability. The issue that will determine whether this exception to the hearsay rule will be applicable at trial is whether Dan Henderson specifically is unavailable at the time of trial, because he is the person who wrote the letter adopting the PWQH. The issue is not whether some other Peterson employee is available at trial; if another person were present for Peterson, that would not resolve the unavailability of the declarant, which is the relevant inquiry in the hearsay analysis. Mr. Henderson, who is no longer employed by Peterson, is outside the subpoena power of this Court.¹ Thus, the State cannot compel him to appear at the trial. Finally, the State has corroborating evidence regarding the PWQH from other witnesses including Mr.

¹ See State of Oklahoma's Response in Opposition to Peterson Farms, Inc.'s Motion *in Limine* Regarding Former Employees (DKT #2474) for further detail and maps regarding Mr. Henderson's location.

Pigeon who testified that the document came from his files and Mr. Dalton who testified about the origin and purpose of the PWQH.

2. Learned Treatise

Peterson's attempt to preempt the State from demonstrating the PWQH is admissible as a learned treatise is premature. As Peterson explains in its motion, a witness would need to testify that the PWQH meets the requirements of a learned treatise, and this is something that would be done at trial. If the State is able to establish through a witness that the PWQH is a learned treatise, then it should be able to use the PWQH accordingly, but a motion *in limine*, claiming that the State should be precluded from the opportunity to even attempt to do this at trial is simply premature and improper. If the State determines it is appropriate to introduce the PWQH as a learned treatise, the Court can evaluate whether it has done so sufficiently at trial, but not before. Thus, Peterson's learned treatise argument simply is premature and inappropriate at this time and cannot even be considered unless or until the State has an opportunity to address this hearsay exception with a witness.

Peterson implies in its motion, in footnote 3, that the State cannot have one of its experts testify about whether the PWQH is a learned treatise because that testimony would amount to previously undisclosed expert opinion. This argument is a nonstarter for two reasons. First, the State could have a witness other than a retained expert testify regarding whether the PWQH is a learned treatise. Second, the State's expert Robert Taylor cited the PWQH in his expert report, and thus he could testify about the document. Third, Peterson's characterization of Don Dalton's testimony is inaccurate. Peterson cites to page 37 of the Dalton deposition, which provides no support for their position. In fact, Mr. Dalton testified that at the time the PWQH was published, it was an up-to-date collection of all the information that was available on the subject of water

quality and poultry production at that time. It was designed to be and served as a key resource on this topic for individuals in the poultry industry and related environmental fields. *See* Ex. 4, pp. 136-37.

3. Other Hearsay Exceptions

In addition to those discussed above, the PWQH fits into other exceptions to the hearsay rule, specifically, Fed. R. Evid. 803(6), records of regularly conducted activity, and Fed. R. Evid. 803(8), the government documents exception. The editions of the PWQH and the corresponding letter from former Peterson president Dan Henderson were documents created and maintained in the course of regularly conducted business activities and have been authenticated as such. The PWQH was created and the second edition was updated as part of the regularly conducted business activities of the Poultry Water Quality Consortium. *See* Ex. 4, Dalton Depo, pp. 31-41, 51. Likewise, the letter from Mr. Henderson and accompanying copy of the PWQH was maintained in the ordinary course of business in the files of Peterson poultry grower and former Peterson employee Jim Pigeon. *See* Ex. 5, Pigeon Depo, pp. 16-21, 111-13, 116-17.

In regard to Fed. R. Evid. 803(8), the public documents exception, the PWQH was created and updated and revised by the Poultry Water Quality Consortium, which was funded by the USDA's Natural Resources Conservation Service. *See* Ex. 4, Dalton Depo, p. 28. Members of the Poultry Water Quality Consortium were the USDA Natural Resources Conservation Services, the U.S. E.P.A., the Tennessee Valley Authority, and the U.S. Poultry and Egg Association. *See* Ex.1 at PIGEON 0587. The Consortium, funded by the government and which included three government agencies, was tasked with creating and updating the handbook, which it did in the ordinary course of its activities. In fact, at the end of each section of the PWQH, there is text that states, “[p]ermission is hereby granted to producers, growers, and associations

serving the poultry industry to reproduce this material for further distribution. The Poultry Water Quality Consortium is a cooperative effort of industry and government to adopt prudent uses of poultry and poultry by-products that will preserve the quality of water for everyone.” *See, e.g.*, Ex. 1, at PIGEON 499. This text demonstrates the document was intended to be a public, widely distributed document, endorsed by the government agencies involved in creating it. Thus, the PWQH is also admissible under the public documents exception to the hearsay rule.

III. The PWQH should not be excluded pursuant to Fed. R. Evid. 403

Peterson's arguments that the PWQH should be excluded pursuant to Fed. R. Evid. 403 because it is more prejudicial than probative also fail. As explained above, the two editions of the PWQH were created to provide up-to-date information about water quality issues for the poultry industry. The PWQH is extremely probative to the issue of what was known and knowable by Defendants in this case regarding the environmental problems associated with the land application of poultry waste.

Although Peterson now questions the reliability of the PWQH (Motion, p. 9), as described above, the PWQH was created by the Poultry Water Quality Consortium, which included four members: USDA Natural Resources Conservation Services, the U.S. E.P.A., and Tennessee Valley Authority, and the U.S. Poultry and Egg Association. The involvement of two federal agencies, a state agency, and one of the largest poultry industry trade organizations demonstrates that the document has probative value on relevant issues. Peterson's argument regarding reliability of the document is ironic since Peterson's president found the PWQH highly reliable, endorsing it and sending to Peterson's growers with instructions to follow the practices set forth in the book. Furthermore, Peterson's faux-*Daubert* argument regarding the qualification

and reliability of the contributors to the PWQH has no merit -- it simply confuses the standard to be applied when determining whether to admit documentary evidence.

In short, the PWQH will create no prejudice for Peterson, but it is highly probative to the issues pending in this case.

IV. Conclusion

For the reasons stated herein, Peterson's motion should be denied in its entirety.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
ATTORNEY GENERAL
Kelly H. Burch OBA #17067
ASSISTANT ATTORNEY GENERAL
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

/s/ Ingrid L. Moll
William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
MOTLEY RICE LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1678

Jonathan D. Orent
(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
(admitted *pro hac vice*)
MOTLEY RICE LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS	
Louis Werner Bullock	lbullock@bullock-blakemore.com
Robert M. Blakemore	bblakemore@bullock-blakemore.com
BULLOCK, BULLOCK & BLAKEMORE	
Frederick C. Baker	fbaker@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Michael G. Rousseau	mrousseau@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
MOTLEY RICE LLC	
<u>Counsel for State of Oklahoma</u>	
Robert P. Redemann	rredemann@pmrlaw.net
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.	
David C. Senger	david@cgmlawok.com
Robert E Sanders	rsanders@youngwilliams.com
Edwin Stephen Williams	steve.williams@youngwilliams.com
YOUNG WILLIAMS P.A.	
<u>Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.</u>	

John H. Tucker	jtucker@rhodesokla.com
Theresa Noble Hill	thill@rhodesokla.com
Colin Hampton Tucker	ctucker@rhodesokla.com
Kerry R. Lewis	klewis@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE	
Terry Wayen West	terry@thewestlawfirm.com
THE WEST LAW FIRM	
Delmar R. Ehrich	dehrich@faegre.com
Bruce Jones	bjones@faegre.com
Krisann C. Kleibacker Lee	kklee@faegre.com
Todd P. Walker	twalker@faegre.com
Christopher H. Dolan	cdolan@faegre.com
Melissa C. Collins	mcollins@faegre.com
Colin C. Deihl	cdeihl@faegre.com
Randall E. Kahnke	rkahnke@faegre.com
FAEGRE & BENSON, LLP	
<u>Counsel for Cargill, Inc. & Cargill Turkey Production, LLC</u>	
James Martin Graves	jgraves@bassettlawfirm.com
Gary V Weeks	gweeks@bassettlawfirm.com
Woody Bassett	wbassett@bassettlawfirm.com
K. C. Dupps Tucker	kctucker@bassettlawfirm.com
Earl Lee "Buddy" Chadick	bchadick@bassettlawfirm.com
Vincent O. Chadick	vchadick@bassettlawfirm.com
BASSETT LAW FIRM	
George W. Owens	gwo@owenslawfirmmpc.com
Randall E. Rose	rer@owenslawfirmmpc.com
OWENS LAW FIRM, P.C.	
<u>Counsel for George's Inc. & George's Farms, Inc.</u>	
A. Scott McDaniel	smcdaniel@mhla-law.com
Nicole Longwell	nlongwell@mhla-law.com
Philip Hixon	phixon@mhla-law.com
Craig A. Merkes	cmerkes@mhla-law.com
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC	
Sherry P. Bartley	sbartley@mwsgw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC	
<u>Counsel for Peterson Farms, Inc.</u>	

John Elrod	jelrod@cwlaw.com
Vicki Bronson	vbronson@cwlaw.com
P. Joshua Wisley	jwisley@cwlaw.com
Bruce W. Freeman	bfreeman@cwlaw.com
D. Richard Funk	rfunk@cwlaw.com
CONNER & WINTERS, LLP	
<u>Counsel for Simmons Foods, Inc.</u>	
Stephen L. Jantzen	sjantzen@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
RYAN, WHALEY, COLDIRON & SHANDY, P.C.	
Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Thomas C. Green	tcgreen@sidley.com
Gordon D. Todd	gtodd@sidley.com
SIDLEY, AUSTIN, BROWN & WOOD LLP	
Robert W. George	robert.george@tyson.com
L. Bryan Burns	bryan.burns@tyson.com
Timothy T. Jones	tim.jones@tyson.com
TYSON FOODS, INC	
Michael R. Bond	michael.bond@kutakrock.com
Erin W. Thompson	erin.thompson@kutakrock.com
Dustin R. Darst	dustin.darst@kutakrock.com
KUTAK ROCK, LLP	
<u>Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.</u>	
R. Thomas Lay	rtl@kiralaw.com
KERR, IRVINE, RHODES & ABLES	
Frank M. Evans, III	fevans@lathropgage.com
Jennifer Stockton Griffin	jgriffin@lathropgage.com
David Gregory Brown	
LATHROP & GAGE LC	
<u>Counsel for Willow Brook Foods, Inc.</u>	
Robin S Conrad	rconrad@uschamber.com

NATIONAL CHAMBER LITIGATION CENTER	
Gary S Chilton	gchilton@hcdattorneys.com
HOLLADAY, CHILTON AND DEGIUSTI, PLLC	
<u>Counsel for US Chamber of Commerce and American Tort Reform Association</u>	
D. Kenyon Williams, Jr.	kwilliams@hallestill.com
Michael D. Graves	mgraves@hallestill.com
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON	
<u>Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.</u>	
Richard Ford	richard.ford@crowedunlevy.com
LeAnne Burnett	leanne.burnett@crowedunlevy.com
CROWE & DUNLEVY	
<u>Counsel for Oklahoma Farm Bureau, Inc.</u>	
Kendra Akin Jones, Assistant Attorney General	Kendra.Jones@arkansasag.gov
Charles L. Moulton, Sr Assistant Attorney General	Charles.Moulton@arkansasag.gov
<u>Counsel for State of Arkansas and Arkansas National Resources Commission</u>	
Mark Richard Mullins	richard.mullins@mcafeetaft.com
MCAFEE & TAFT	
<u>Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen</u>	
Mia Vahlberg	mvahlberg@gablelaw.com
GABLE GOTWALS	
James T. Banks	jtbanks@hhlaw.com
Adam J. Siegel	ajsiegel@hhlaw.com
HOGAN & HARTSON, LLP	
<u>Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey Federation</u>	
John D. Russell	jrussell@fellerssnider.com
FELLERS, SNIDER, BLANKENSHIP, BAILEY & TIPPENS, PC	
William A. Waddell, Jr.	waddell@fec.net

David E. Choate	dchoate@fec.net
FRIDAY, ELDREDGE & CLARK, LLP	
<u>Counsel for Arkansas Farm Bureau Federation</u>	
Barry Greg Reynolds	reynolds@titushillis.com
Jessica E. Rainey	jrainey@titushillis.com
TITUS, HILLIS, REYNOLDS, LOVE, DICKMAN & MCCALMON	
Nikaa Baugh Jordan	njordan@lightfootlaw.com
William S. Cox, III	wcox@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC	
<u>Counsel for American Farm Bureau and National Cattlemen's Beef Association</u>	
Duane L. Berlin	dberlin@levberlin.com
LEV & BERLIN PC	
<u>Counsel for Council of American Survey Research Organizations & American Association for Public Opinion Research</u>	

Also on this 20th day of August, 2009, I mailed a copy of the above and foregoing pleading to:

Thomas C Green -- via email: tcgreen@sidley.com
Sidley, Austin, Brown & Wood LLP

Dustin McDaniel
Justin Allen
Office of the Attorney General (Little Rock)
323 Center St, Ste 200
Little Rock, AR 72201-2610

Steven B. Randall
58185 County Rd 658
Kansas, Ok 74347

Cary Silverman -- via email: csilverman@shb.com
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)

/s/ Ingrid L. Moll
Ingrid L. Moll